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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

FF PROPERTIES, LP, Plaintiff and Appellant, v. MICHELL STEWART, Defendant and Respondent.	A156220 (Solano County Super. Ct. No. FCS049474)

After a bench trial, a judgment was entered in favor of defendant Michell Stewart on the complaint of plaintiff FF Properties, LP for injunctive and declaratory relief. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Michell Stewart was injured in a fire at her apartment, which was owned by FF Properties. FF Properties initiated this action seeking to enforce a purported settlement agreement obtained by its attorney, William Jenkins, and to prohibit Stewart from pursuing any claims for damages. Stewart's answer to the complaint denied its allegations and asserted various affirmative defenses. Among other things, Stewart alleged that Jenkins was aware she had not read the document he instructed her to sign and that Stewart withheld tendering the original signed document to Jenkins. Instead, she kept the signed document so she could consider the matter

further. In September 2018, a bench trial was held on the matter. The evidence at trial included the following.

On December 29, 2015, a fire occurred in Stewart's apartment, which resulted in burns on her arms, shoulder, and back. Stewart's undiscounted medical expenses exceeded $250,000. Liability for her injuries is disputed.

Stewart had been living in the United States for over 40 years, and English was her second language. She attended special education and speech courses from fifth grade through high school. She then participated in vocational rehabilitation programs to assist her in obtaining employment. Stewart experienced two mental breakdowns during her work history, but ultimately attended a city college and graduated as a Certified Nursing Assistant. She is now retired and on medical disability.

Jenkins is a litigation attorney who represented FF Properties, the owner of the apartment building. On April 19, 2017, Jenkins met with Stewart at a public library in an attempt to settle her claims arising from the fire. Stewart was unrepresented, and no one else was present.

During their meeting, Jenkins told Stewart that liability was disputed, and he proposed a settlement of $30,000. Stewart responded that $30,000 would not cover her medical bills. When Stewart stated her medical bills were over $100,000, Jenkins said he could guarantee the carrier would not pay that much. Stewart thereafter inquired whether Jenkins's client would pay $80,000, and Jenkins said he did not think so and offered $40,000. Stewart said, " 'Well, 40 is not going to cover everything,' " and she got up to leave. Jenkins then referred to the fire department report, explained the case could be in litigation for years, and said Stewart could end up getting nothing. At that point, Stewart left and telephoned her son to discuss the proposal, but her son told her she had to decide what she wanted.

When Stewart returned, Jenkins produced a one-page, three-paragraph document entitled "Settlement Agreement and Release of All Claims" (hereafter, the Release or the document). The first paragraph recited that Stewart, "for the sole consideration of _____ DOLLARS" to be paid on behalf of FF Properties, "does hereby release and forever discharge [FF Properties] from any and all claims, obligations and damages" resulting from the December 29, 2015 fire. The second paragraph stated "[i]t is further understood and agreed that this Release shall apply to any and all claims for unknown, unsuspected or unanticipated injuries and/or results from injuries which might be asserted by [Stewart], as well as to those now disclosed." The third paragraph set forth a waiver of all rights under Civil Code section 1542. Jenkins filled in the date and wrote in $40,000 as the settlement amount.

Stewart testified that Jenkins did not read the Release to her or explain what the document was.[1] Jenkins testified that when he presented the Release to Stewart for signature, he told her "that, once she signed the agreement, that I would order the check; and then that when I meet her with the check, I'll give her a more formal settlement agreement that we can go over to sign." The future agreement would contain additional terms not included in the Release, and Jenkins assured Stewart he would review and explain its terms as she requested.

Stewart testified she ultimately signed the Release because she thought it was "just for [Jenkins] to bring it to his [insurance] carrier, so he could get the check." She did not "think of it as being anything," because Jenkins "said he was going to come back with a formal document and then go

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[1] Conversely, Jenkins testified he read the Release to Stewart, and they "went over it together." Jenkins also claimed Stewart declined his offer that she talk to an attorney before signing the Release.

over it with me and explain to me what it was." Stewart did not tender the signed Release to Jenkins, nor was there evidence that Jenkins asked or demanded that she do so. Retaining the signed original gave Stewart "comfort" that she still had some time to think about the settlement proposal before Jenkins returned with a different document that he would explain to her and that would require her signature.[2] The meeting between Stewart and Jenkins lasted only about 20 to 30 minutes.[3]

Consistent with their in-person discussion, Jenkins left a voice message for Stewart on April 27, 2017, reminding her of their meeting the week before on her fire loss claim. He said he had a new release to go over with her and the check for $40,000. The next day (April 28), Jenkins left another voice message for Stewart, asking to meet her so he could give her the check and "go over each of the paragraphs of the release so you'll understand what . . . the release is about anyway." That same day, Jenkins emailed Stewart a confirmation of his voice message and reminded Stewart she had requested that Jenkins meet with her "to explain the terms of the formal settlement agreement and release" once he received the settlement check.[4]

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[2] At trial, the trial court expressed confusion that, if the Release represented a resolution of the case releasing Jenkins's client, "why would the releasing party keep the original?" Jenkins could not answer that question, instead saying he did not know and was "a little fuzzy on what we did with the settlement agreement." According to Jenkins, however, Stewart never vocalized that she was keeping the signed original because she was not sure she was going to go through with the settlement or that she would think it over before tendering the signed Release.

[3] Jenkins testified the meeting lasted about an hour.

[4] Although Jenkins's two voice messages indicated he had a new release for Stewart to sign, Jenkins testified during recross-examination that he had never prepared such a release.

Stewart did not meet with Jenkins and instead consulted attorney Steven Clawson. Clawson informed Jenkins of his representation of Stewart by letter dated May 5, 2017. Later that month, Clawson proposed a settlement by letter. Jenkins responded to Clawson by letter dated June 2, 2017, sending a check for $40,000 and referencing the Release. Stewart then retained a different attorney, Yolanda Bachtell, who returned the $40,000 check to Jenkins by letter dated October 3, 2017.

Stewart's medical service providers have continued to demand payment from her. FF Properties has rejected Stewart's demand for payment of her medical bills.

In October 2018, the trial court issued a written decision. Based on the evidence presented, the court concluded "[t]he objective outward manifestations and actions of Jenkins and [Stewart] demonstrate that it was their mutual intention that the Release was not a complete or binding settlement agreement until a formal settlement with additional material terms was reviewed, explained in detail, and signed by [Stewart]." The court additionally found the Release did not include all essential and material terms, making it uncertain and unenforceable. On this score, the court observed the Release contained no provisions for payment responsibility for Stewart's medical bills, for allocating the settlement amount between general and/or economic damages, or for any admission or denial of liability.

FF Properties timely appealed.

DISCUSSION

A judgment of a lower court is presumed correct, and the reviewing court will indulge all intendments and presumptions in favor of its correctness. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 (*Arceneaux*).) Under the doctrine of implied findings, we must infer, following

a bench trial, that "the trial court made all factual findings necessary to support the judgment." (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 58.)

In reviewing a judgment following a bench trial, we apply a substantial evidence standard of review. (*Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 981.) Evidence is substantial if it is "of ponderable legal significance, reasonable in nature, credible, and of solid value." (*Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201.) The testimony of a single witness, even a party witness, may suffice as substantial evidence. (*Ibid.*) When conducting a substantial evidence review, we do not reweigh evidence or reappraise the credibility of witnesses. (*Thompson*, at p. 981.)

On appeal, FF Properties emphasizes the strong policy in favor of settlements and argues the judgment should be reversed because the trial court ignored the statutory rules governing contract construction, incorrectly considered parol evidence, and misconstrued the evidence it considered. Conversely, Stewart highlights the trial court's finding that the parties did not enter into a complete or binding contract and contends substantial evidence supports that determination. If Stewart is correct, then the strong policy favoring settlements, and the rules governing contract construction, do not come into play because the parties did not agree to settle.

Settlement agreements and release agreements are governed under general principles of contract law. (*Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127 [settlements]; *Otay Land Co., LLC v. U.E. Limited, L.P.* (2017) 15 Cal.App.5th 806, 854 [releases].) Of particular relevance here is the principle that mutual consent is essential to contract formation and "cannot exist unless the parties 'agree upon the same thing in the same sense.' " (*Bustamante v. Intuit, Inc.* (2006) 141 Cal.App.4th 199, 208 (*Bustamante*).)

In determining the existence of mutual consent, courts look to the objective, outward manifestations or expressions of the parties, that is, " 'the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings.' " (*Ibid*.) Where the evidence is conflicting or gives rise to more than one inference, it is up to the trier of fact to determine whether a contract was formed. (*Vita Planning & Landscape Architecture, Inc. v. HKS Architects, Inc.* (2015) 240 Cal.App.4th 763, 771.) In such circumstances, contract formation is a question of fact that will be upheld when supported by substantial evidence. (*Id*. at p. 772; *Bustamante*, at p. 208.)

We conclude substantial evidence in the record supports the trial court's determination that the objective outward manifestations and actions of Stewart and Jenkins did not demonstrate the requisite mutual assent necessary for contract formation. Stewart and Jenkins both testified that Jenkins told Stewart he would be able to order a check for $40,000 if she would sign the Release. But the record includes evidence indicating that Jenkins's words and acts actually and reasonably induced Stewart's understanding that her signature on the Release was simply necessary for a check to be cut and that the two would meet again to go over a different agreement containing additional terms. Indeed, Jenkins made clear to Stewart that the Release did not embody all the terms of a final and formal settlement agreement and release, that a final agreement still needed to be drafted, that Jenkins would bring the future agreement to Stewart and explain all its terms to her, and that the future agreement would require Stewart's signature. Moreover, as the trial court indicated, that Jenkins evidently allowed Stewart to retain the original signed Release seemed at odds with a conclusion that the document represented a complete resolution

of the case releasing Jenkins's client. Finally, Jenkins gave no indication at the meeting with Stewart that delivery of the $40,000 check was not contingent on her signing the new settlement agreement and release. Indulging all intendments and presumptions in favor of the judgment (*Arceneaux*, *supra*, 51 Cal.3d at p. 1133), we conclude the record amply supports the trial court's finding that mutual assent regarding the binding nature of the Release was lacking.

In seeking reversal, FF Properties cites several statutory rules pertaining to the interpretation of written contracts. (E.g., Civ. Code, §§ 1638 [language of the contract governs its interpretation if it is clear and explicit and does not involve an absurdity], 1639 [when a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible]; Code Civ. Proc., § 1858 [in construing an instrument, a judge must ascertain and declare what is contained therein and may not insert what has been omitted].) Relying on these statutes and case law to the same effect, FF Properties contends that the parties' intent to enter a binding settlement agreement must be determined solely from the language of the Release, and that, standing alone, the Release evidenced the parties' binding agreement that Stewart would release and forever discharge FF Properties from any and all damage claims for $40,000. FF Properties also argues the trial court incorrectly relied on parol evidence to determine the parties' intent. We are not persuaded.

As the trial court correctly recognized, parol evidence is admissible to show that a writing was not intended as a binding contract because it was not to become effective until a condition occurred. (*Louis Lesser Enterprises, Limited v. Roeder* (1962) 209 Cal.App.2d 401, 410 (*Louis Lesser*).) Here, the parol evidence was sufficient to establish that Stewart and Jenkins

outwardly manifested an intent that a settlement would not be complete or binding, and that Stewart would not get a check, until she signed a settlement and release agreement containing additional terms. That being the case, the trial court could properly find that the parties did not enter a contract because that was not done. (E.g., *Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 359; *Louis Lesser*, at p. 404.)

We find the decision in *Louis Lesser*, *supra*, 209 Cal.App.2d 401, instructive. Although the alleged joint venture agreement in *Louis Lesser* was a far more sophisticated and involved transaction than the alleged settlement agreement here, the decision made several observations pertinent to our case. First and foremost, *Louis Lesser* recognized that parol evidence is admissible to show that a writing was not intended to have binding effect. (*Id*. at p. 410.) As the court explained: "While preliminary negotiations ordinarily result in a binding contract when all of the terms are definitely understood, even though the parties intend to later execute a formal writing [citations], where any of the essential terms are left for future determination and it is understood that the agreement is not deemed complete until they are settled or *where the parties understood that the proposed agreement is not complete until reduced to formal writing and signed, no binding contract results until this is done*. [Citations.]" (*Id*. at pp. 404–405, italics added; cf. *California Food Service Corp. v. Great American Ins. Co.* (1982) 130 Cal.App.3d 892, 897 [fact that parties exhibited substantial conduct consistent with their letter of intent to sublease property strongly suggested the binding effect of the letter without the need to execute additional documents].) This principle is not limited to oral negotiations; indeed, it applies equally to preliminary written discussions, "for there is no meeting of

the minds of the parties while they are still negotiating terms." (*Louis Lesser*, at p. 405.)

As discussed, the evidence here shows Jenkins indicated to Stewart that a more formal agreement and release with additional terms needed to be prepared and signed. But there was no evidence that Jenkins described the additional terms, their significance, or their materiality to Stewart at the time he instructed her to sign the Release. And as Stewart's testimony established, Jenkins did not explain the content and supposedly binding nature of the provisions set forth in the Release; instead, he simply acquiesced to Stewart's request that he explain the future document and all its terms to her. We are hard pressed to see how a meeting of the minds sufficient to create a complete and binding contract could have occurred when FF Properties presumptively knew what terms it would require as part of a final agreement, but Stewart did not. To the extent FF Properties contends *Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530 supports a contrary result, we disagree. *Kohn*—which involved an oral settlement agreement stipulated by the parties in court following a judicially mandated and supervised settlement conference (*id.* at pp. 1533–1534)—offers no parallel to the situation here.

More to the point, *Louis Lesser* rejected the type of parol evidence arguments asserted by FF Properties here. In *Louis Lesser*, the trial court found that two letters signed by the parties constituted a mere interim agreement that was not intended to be a binding or completed contract, based in part on the defendants' testimony to that effect. (*Louis Lesser*, *supra*, 209 Cal.App.2d at pp. 409–410.) On appeal, the court noted the plaintiffs "argue at length that the language of the writings is clear, thus it was a violation of the parol evidence rule to admit [the defendants'] testimony as it sought to

contradict, vary and add new terms to the agreement; further, that nowhere therein was it agreed that the parties were not to be bound until execution of a formal writing, and the 'understandings' and 'agreements' referred to consist of those outlined in the letter of July 14." (*Id*. at p. 410.) In rejecting the plaintiffs' contentions, *Louis Lesser* emphasized the circumstance that, "[w]hile the letter of July 14 . . . does not expressly say that the proposed agreement is not to be deemed complete until reduced to writing, neither does it provide that by its terms a binding contract arises even though the parties intend to later execute a formal document." (*Ibid*.) In other words, because the letter of July 14 "[did] not include any term inconsistent with the oral condition precedent (that the letters would not constitute a binding contract until reduced to formal writing) the admission of testimony to establish this was proper [citations]." (*Ibid*.) In sum, the defendants' testimony was properly considered because it "was not employed to vary or defeat the terms of any agreement—it was used only to determine whether one was in existence." (*Id*. at pp. 410–411.)

That is precisely the situation here: Stewart's testimony concerning Jenkins's statements and actions did not contradict any of the terms set forth in the Release, but her testimony—coupled with other evidence of their outwardly manifested conduct—provided substantial evidence establishing that a complete and binding contract did not exist.

Having concluded that substantial evidence supports the trial court's determination that the Release did not constitute a complete and binding contract, we need not and do not address the contentions of FF Properties that presuppose the existence of such a contract.[5]

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[5] Our decision rests solely on the evidence and reasoning addressed in the text. We acknowledge, however, that the trial court's written decision

DISPOSITION

The judgment is affirmed. Stewart is awarded her costs on appeal.

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further found that the Release was uncertain and unenforceable because it did not include all essential and material terms, i.e., it contained no provisions for payment responsibility for Stewart's medical bills, for allocating the settlement amount between general and/or economic damages, or for any admission or denial of liability. We express no opinion as to the merits of that finding or whether it might independently or further support the judgment.

FUJISAKI, J.

We concur.

SIGGINS, P.J.

JACKSON, J.

(A156220)